

Letter of Findings Number: 04-20100732P
Sales Tax
For Tax Period Ending April 30, 2010

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation operating a retail store in Indiana. The Indiana Department of Revenue ("Department") issued proposed assessments for sales tax, ten percent negligence penalties, and interest for the month of April, 2010. Taxpayer paid the liability twenty-two days after the due date. Taxpayer protested the imposition of ten percent negligence penalties. While Taxpayer did call once to check on the status of the protest, when the Hearing Officer asked if Taxpayer wanted an administrative hearing, Taxpayer said that it would consider whether or not it desired a protest. Two weeks later, the Hearing Officer had not received any response. Therefore, this Letter of Findings was written based on the facts found in the protest file.

I. Tax Administration–Negligence Penalty.

DISCUSSION

The Department issued proposed assessments for sales tax and the ten percent negligence penalty for the tax period in question. Taxpayer protests the imposition of penalty and requests a one-time waiver of that penalty. Taxpayer states that it was in the process of automating its tax compliance process in an effort to surpass the expectations of reasonable care, caution, and diligence expected of an ordinary reasonable taxpayer. Taxpayer states that the complexities of the process improvements caused the late payment for this tax period. Additionally, Taxpayer states that it has a long history of timely payments to the State of Indiana. Taxpayer believes that these factors establish grounds for waiver of the ten percent penalty.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant part:

If a person:

...

(4) fails to timely remit any tax held in trust for the state;

...

the person is subject to a penalty.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a)(4). A review of the Department's records shows that this is not the first late payment by Taxpayer. Further, while the Department appreciates

efforts to improve compliance with Indiana's tax requirements, the fact that Taxpayer had prior late payments and the fact that Taxpayer did not remit the sales tax due for April, 2010, until twenty-two days after the due date does not qualify as "reasonable cause." Taxpayer has not affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is denied.

Posted: 05/25/2011 by Legislative Services Agency

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